

To: Kirk Shermer[Kirk@snowdenenterprises.com]
Cc: Janelle Kay[Janelle@PyxisRC.com]; Watanabe, Allison[Watanabe.Allison@epa.gov]
From: Alkon, Margaret
Sent: Wed 3/30/2016 5:11:50 PM
Subject: RE: Snowden Enterprises, Inc.
SnowdenEnterprises SettlementCAFO.pdf

Dear Mr. Shermer,

This is my fifth email to follow up on our conference call of yesterday, in which we discussed the civil administrative complaint against Snowden Enterprises, Inc. ("Snowden") that EPA is prepared to file pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l alleging that Snowden has violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing and selling a misbranded pesticide, The Fruit Doctor, EPA Reg. No. 11195-1 ("The Fruit Doctor").

A draft consent agreement and final order (CAFO) is attached. The six distribution and sale of misbranded pesticides at issue in this case are:

1. Distribution and sale to Sandrini Sales on October 16, 2013 of 18 pound, 25 pound, and 35 pound cylinders of The Fruit Doctor.
2. Distribution and sale to Alta Vista Cold Storage on October 16, 2013 of 10, 12, 15, 20, 25, 35 and 40 pound cylinders of The Fruit Doctor.
3. Distribution and sale to Kovacevich 5 Farms on October 18, 2013 of 6 pound and 48 pound cylinders of The Fruit Doctor.
4. Distribution and sale to Etchegaray Farms on October 17, 2013 of 3, 6, 25, 30 and 45 pound cylinders of The Fruit Doctor.
5. Distribution and sale to Sunview Vinyards of California on October 16, 2013 of 54, 62, 85, and 124 pound cylinders of The Fruit Doctor
6. Holding for sale (which falls within the definition of distribution and sale) of The Fruit Doctor documented to be misbranded during the inspection on October 29, 2013.

In calculating the penalty, EPA used the FIFRA ERP. As I noted yesterday, you can find the ERP at:

<https://www.epa.gov/enforcement/guidance-fifra-enforcement-response-policy>

One factor is the size of business of the business charged with the violation. The size of the business is determined by a company's gross revenues from all revenue sources during the preceding calendar year. Category I includes violators with size of business of over \$10 million a year. Category II includes violators with size of business of between \$1 million to \$10 million a year. Category III is for businesses with under \$1 million a year. In this case, the evidence available to EPA from public sources puts your company in the Category I size of business.

The gravity of these violations is 1, all of which involve missing and/or obscured first aid statements (in addition to the precautionary statement misbrandings on the small labels and the use of instructions not approved by EPA – although as I said on our call we are focusing on the first aid and precautionary statement issues). A penalty of \$7,500 applies to each violation where the assigned size of business category is I and the gravity level is 1 is \$7,500.

Turning to the gravity adjustment factors, the pesticide toxicity is 3 because The Fruit Doctor has a signal word "Danger," and is a restricted use pesticide; the human harm is 3, due to the unknown or potential serious harm to human health from first aid statements being missing or obscured; the environmental harm is also 3, due to the unknown or potential serious harm because of the lack of precautionary statements on the small cylinder label; the compliance history is 0 as Respondent has no prior FIFRA violations (we do not include California's case); and the culpability is 2 due to the negligence in failing to comply with FIFRA, despite familiarity with the requirements of FIFRA. The penalty did not change after consideration of these adjustments.

Thus, it is a \$7,500 penalty for each violation, which totals to \$45,000.

If you know of any new factual information that we should consider, let me know. If you don't have new factual information to provide to us, we can still discuss potential adjustments to the penalty, as the FIFRA ERP does allow a good faith adjustment.

I will be sending a few more emails with the EPA-approved label and the 2010 inspection report you requested.

Sincerely,

Margaret Alkon

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Margaret Alkon

Assistant Regional Counsel

U.S. EPA, Region IX

75 Hawthorne St. (ORC-2)

San Francisco, CA 94105

Email: [alkon.margaret@epa.gov](mailto:alkon.margaret@epa.gov)

Direct Dial: (415) 972-3890

Fax: (415) 947-3570  
~~~~~

From: Kirk Shermer [mailto:Kirk@snowdenenterprises.com]

Sent: Thursday, March 24, 2016 12:29 PM

To: Alkon, Margaret

Cc: Janelle Kay

Subject: RE: Snowden Enterprises, Inc.

Dear Ms. Alkon,

Our regulatory consultant, Janelle Kay, will be setting up the conference line for the call on

March 29th at 10:00 a.m. She will be emailing instructions for the call to all of us.

Sincerely,

Kirk Shermer

Snowden Enterprises, Inc.

Phone
Cell
Fax
Email

(559) 237-5546

Ex. 6 - Personal Privacy

(559) 237-6383

kirk@snowdenenterprises.com

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From: Alkon, Margaret [<mailto:Alkon.Margaret@epa.gov>]

Sent: Thursday, March 24, 2016 12:09 PM

To: Kirk Shermer <Kirk@snowdenenterprises.com>

Cc: Janelle Kay <Janelle@PyxisRC.com>; Watanabe, Allison <Watanabe.Allison@epa.gov>

Subject: RE: Snowden Enterprises, Inc.

Dear Mr. Shermer,

Thank you for your email. Yes, I would appreciate it if you could set up a conference call line.

I look forward to speaking with you all.

Sincerely,

Margaret Alkon

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Margaret Alkon

Assistant Regional Counsel

U.S. EPA, Region IX

75 Hawthorne St. (ORC-2)

San Francisco, CA 94105

Email: [alkon.margaret@epa.gov](mailto:alkon.margaret@epa.gov)

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From: Kirk Shermer [<mailto:Kirk@snowdenenterprises.com>]

Sent: Thursday, March 24, 2016 12:05 PM

To: Alkon, Margaret

Cc: Janelle Kay

Subject: RE: Snowden Enterprises, Inc.

Dear Ms. Alkon,

Thank you for your email from March 23, 2016 proposing a conference call to discuss the matter and Snowden's response. I would like to have Snowden's regulatory consultant, Janelle Kay, participate on the call. She has reviewed the EPA letter, our response, reviewed our labels, and also works closely with EPA and CDPR with our label approvals. We are both available at the

proposed time on Tuesday, March 29. If you agree and would like, we would be happy to set up a conference line for everyone to call into for the call. We look forward to speaking with you then.

Regards,

Kirk Shermer

Snowden Enterprises, Inc.

Phone
Cell
Fax
Email

(559) 237-5546
Ex. 6 - Personal Privacy
(559) 237-6383
kirk@snowdenenterprises.com

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From: Alkon, Margaret [<mailto:Alkon.Margaret@epa.gov>]
Sent: Wednesday, March 23, 2016 6:22 PM
To: Kirk Shermer <Kirk@snowdenenterprises.com>
Cc: Watanabe, Allison <Watanabe.Allison@epa.gov>
Subject: FW: Snowden Enterprises, Inc.

Dear Mr. Shermer,

EPA received your letter of March 8, 2016 responding to our March 1, 2016 letter. Thank you for the proposal to have either an in-person meeting or conference call. Because I work out of our San Francisco office while Ms. Watanabe works out of our of our LA office, we would like to schedule a conference call to discuss this matter.

Proposed Agenda:

Introductions

EPA explanation of timeline & EPA enforcement case

Information you would like EPA to consider

Next Steps

Would you be available for a call at 10am Pacific time on Tuesday March 29th? If that time does not work for you, please propose an alternative time.

Sincerely,

Margaret Alkon

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Margaret Alkon

Assistant Regional Counsel

U.S. EPA, Region IX

75 Hawthorne St. (ORC-2)

San Francisco, CA 94105

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From: Watanabe, Allison
Sent: Wednesday, March 23, 2016 9:27 AM
To: 'Coleen Lira' <Coleen@snowdenenterprises.com>; Rodriguez, Roberto <Rodriguez.Roberto@epa.gov>
Cc: Kirk Shermer <Kirk@snowdenenterprises.com>
Subject: RE: Snowden Enterprises, Inc.

Ms. Lira,

We received your package and are currently reviewing it.

Thank you.

Allison Watanabe

US Environmental Protection Agency

Region 9 FIFRA Enforcement

213-244-1807

From: Coleen Lira [<mailto:Coleen@snowdenenterprises.com>]
Sent: Wednesday, March 23, 2016 8:59 AM
To: Rodriguez, Roberto <Rodriguez.Roberto@epa.gov>; Watanabe, Allison <Watanabe.Allison@epa.gov>
Cc: Kirk Shermer <Kirk@snowdenenterprises.com>
Subject: Snowden Enterprises, Inc.

Good morning Roberto & Allison,

My name is Coleen and I work with Kirk Shermer at Snowden Enterprises, Inc. We sent a response to the EPA Violation letter (dated March 1, 2016) on March 9, 2016 via Certified Mail. We have not received the certified receipt of delivery as of today. We have traced the package and the records show it was delivered on March 14, 2016.

Since, we have no hard copy of the delivery receipt, we wanted to ensure that the package has reached your desks.

Please advise.

Regards,

Coleen Lira

Snowden Enterprises, Inc.

Phone	(559) 237-5546
Fax	(559) 237-6383
Email	coleen@snowdenenterprises.com

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